

COMPILATION OF RESTRICTIONS ON LOBBYING BY CNCS FINANCIAL ASSISTANCE RECIPIENTS

Organizations must comply with the federal restrictions on partisan political activity when they receive grants from or enter into cooperative agreements with the Corporation for National and Community Service (CNCS).

These lobbying restrictions prohibit recipients from:

- Spending federal or matching funds to influence an officer or employee of any agency or Congressional member/staff regarding federal awards (contracts, grants or cooperative agreements);
- Using federal or matching funds to influence the introduction, enactment or modification of any pending federal, state, or local legislation; or

Recipients are also required to submit required certification and disclosure forms (i.e., SF-LLL, Disclosure of Lobbying Activities Form).

To help organizations understand and comply with these restrictions, CNCS has compiled this list of statutory and regulatory references which contain the limitations and restrictions on lobbying. This list is not exhaustive. It is merely a reference tool, not a recitation of all the applicable legal principles that might apply in a given situation.

The Byrd Amendment

Congress placed lobbying restrictions on recipients of federal funding through the Byrd Amendment to the Department of the Interior Appropriations Act for Fiscal Year 1990 (Pub. L. 101-121, October 23, 1989; and 31 U.S.C. § 1352). CNCS implemented this requirement in 45 CFR Part 1230, *New Restrictions on Lobbying*. The regulation, in part, sets forth the following general prohibition:

No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence¹ an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.²

These restrictions were further refined in the Lobbying Disclosure Act of 1995 (Pub. L. 104-65, December 19, 1995 and 2 U.S.C. 1601, et seq.), which defined the terms in the Byrd Amendment. This Act also repealed reporting requirements in the Byrd Amendment, including semiannual agency compilations for Congress and an annual Inspector General report.

¹ Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action. 45 CFR § 1230.105(h).

² 45 CFR § 1230.100(a).

In total, these statutory and regulatory provisions preclude expenditure of federal funds to influence officers or employees of any agency or Congressional members or staff regarding the award of federal contracts, grants, cooperative agreements, or loans.

[45 CFR Part 1230, Appendix A](#) contains the required certification language for Contracts, Grants, Loans, and Cooperative Agreements, and for Loan Guarantees and Loan Insurance, that each person that requests or receives a Federal contract, grant, or cooperative agreement from CNCS must adhere to.

[45 CFR Part 1230, Appendix B](#) provides the required SF-LLL for each person to disclose any lobbying activities.

Code of Federal Regulations

Provisions in the Code of Federal Regulations (CFR), *Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards* (2 CFR Part 200) broaden the Byrd Amendment restrictions.

Additional restrictions are placed on nonprofit organizations and Institutes of Higher Education. These restrictions limit expenditures on any attempts to influence the outcomes of elections, establishing or paying for a political party's expenses, and for aiding legislative liaison activities. Costs are also unallowable if they are associated with any attempt to influence the introduction of federal or state legislation, or the enactment or modification of any pending federal or state legislation through communication with employees or member of congress or state legislatures, or through preparation, distribution, or use of publicity or propaganda.³ Exceptions to these prohibited activities include:

- Technical or factual presentations on topics related to the performance of a grant in response to a documented request made by the member of congress or legislative body;⁴
- Any lobbying to influence state legislation to directly reduce the cost, or to avoid material impairment of the nonfederal entity's authority to perform the grant;⁵
- Any activity specifically authorized by statute to be undertaken with funds from the federal award;⁶ and
- Nonpartisan analysis, study, or research reports and examinations and discussions of broad social, economic, and information provided upon request by a legislator for technical advice and assistance, as defined by the Internal Revenue Code.⁷

Annual Appropriations Restrictions

Appropriations Acts for Fiscal Years 2012 through 2019 provide that:

No part of any appropriation contained in this Act ... shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the

³ 2 CFR § 200.450(c)(1).

⁴ 2 CFR § 200.450(c)(2)(i).

⁵ 2 CFR § 200.450(c)(2)(ii).

⁶ 2 CFR § 200.450(c)(2)(iii).

⁷ 2 CFR § 200.450(c)(2)(iv).

*Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.*⁸

This provision is a restriction on the direct expenditure of federal funds. Therefore, it applies to the actions of AmeriCorps VISTA and AmeriCorps NCCC members in the performance of their officially-assigned duties. Because restrictions on federal direct expenditures do not apply to grantees, this specific restriction does not apply to CNCS's grant funded programs. However, the next section of the annual appropriations acts does specifically apply to grantees.

*No part of any appropriation contained in this Act ... shall be used to pay the salary or expenses **of any grant or contract recipient, or agent acting for such recipient**, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.*⁹ (Emphasis added).

The final section of these annual appropriations provisions makes clear that both of the restrictions above (the one on direct federal expenditures, and the one on expenses by grant or contract recipients) applies to lobbying for certain specified subjects.

*The prohibitions in [the two subsections above] shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.*¹⁰

In addition to these generally applicable provisions, there are provisions specific to CNCS' programs that also restrict lobbying.

CNCS Specific Requirements

Section 132A of the National and Community Service Act of 1990 (NCSA) (42 U.S.C. § 12584a) provides that “[a]n **approved national service position ... may not be used for ... [a]ttempting to influence legislation**” (Emphasis added.) CNCS' regulations make this restriction applicable to AmeriCorps members and program staff “[w]hile charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by [CNCS].”

Section 403(c) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. § 5043), which applies to CNCS' Senior Corps and AmeriCorps VISTA programs, provides that—

⁸ See e.g. Pub. L. 114-113, Division H, Title V, Sec. 503(a), (Dec. 18, 2015); Pub. L. 113-235, Division G, Title V, Sec. 503(a), (Dec. 16, 2014); Pub. L. 113-76, Division H, Title V, Sec. 503(a), (Jan. 17, 2014); Pub. L. 113-6, (Mar. 26, 2013); Pub. L. 112-74, Division F, Title V, Sec. 503(a), (Dec. 23, 2011).

⁹ See e.g. Pub. L. 114-113, Division H, Title V, Sec. 503(b), (Dec. 18, 2015); Pub. L. 113-235, Division G, Title V, Sec. 503(b), (Dec. 16, 2014); Pub. L. 113-76, Division H, Title V, Sec. 503(b), (Jan. 17, 2014); Pub. L. 113-6, (Mar. 26, 2013); Pub. L. 112-74, Division F, Title V, Sec. 503(b), (Dec. 23, 2011).

¹⁰ See e.g. Pub. L. 114-113, Division H, Title V, Sec. 503(c), (Dec. 18, 2015); Pub. L. 113-235, Division G, Title V, Sec. 503(c), (Dec. 16, 2014); Pub. L. 113-76, Division H, Title V, Sec. 503(c), (Jan. 17, 2014); Pub. L. 113-6, (Mar. 26, 2013); Pub. L. 112-74, Division F, Title V, Sec. 503(c), (Dec. 23, 2011).

No funds appropriated to carry out this Act shall be used by any program assisted under this Act in any activity for the purpose of influencing the passage or defeat of legislation¹¹

CNCS has, by regulation¹², stated that under the prohibition in section 403(c) a Senior Corps Volunteer member may not—

- Testify or appear before legislative bodies in regard to proposed or pending legislation
- Make telephone calls, write letters, or otherwise contact legislators or legislative staff, concerning proposed or pending legislation for the purpose of influencing the passage or defeat of such legislation
- Draft legislation
- Prepare legislative testimony;
- Prepare letters to be mailed by third parties to members of legislative bodies concerning proposed or pending legislation
- Prepare or distribute any form of material, including pamphlets, newspaper columns, and material designed for either the print or electronic media, which urges recipients to contact their legislator or otherwise seek passage or defeat of legislation
- Raise, collect or solicit funds to support efforts to affect the passage or defeat of legislation
- Engage in any of those activities for the purpose of influencing executive action in approving or vetoing legislation.

CNCS has, by regulation¹³, stated that under the prohibition in section 403(c) a VISTA sponsors and subrecipients may not—

- assign a VISTA to perform service or engage in activities related to influencing the passage or defeat of legislation or proposals by initiative petition.
- use any CNCS financial assistance, such as VISTA funds or the services of a VISTA, for any activity related to influencing the passage or defeat of legislation or proposals by initiative petition.

¹¹ Note that while Section 403(c) has two exceptions that would appear to permit some lobbying activity by Senior Corps or AmeriCorps VISTA participants using grant funds, those exceptions are annually overridden by the annual appropriations restrictions that prevent lobbying by non-profit grantees, as discussed above.

¹² 45 CFR § 1226.8(d).

¹³ 45 CFR § 2556.780.